

## **EXHIBIT A**

# **UNREDACTED DECLARATION OF REBEKAH S. GUYON**

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23 **UNITED STATES DISTRICT COURT**  
24 **NORTHERN DISTRICT OF CALIFORNIA**

25 IN RE: 23ANDME, INC., CUSTOMER DATA  
26 SECURITY BREACH LITIGATION

27 CASE NO. 24-md-03098-EMC

28 Hon. Edward M. Chen

29 **DECLARATION OF REBEKAH S. GUYON  
30 IN SUPPORT OF 23ANDME, INC.'S  
31 MEMORANDUM IN SUPPORT OF  
32 PLAINTIFFS' MOTION FOR  
33 PRELIMINARY APPROVAL OF CLASS  
34 ACTION SETTLEMENT**

35 **UNREDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL**

36 Case No. 24-md-03098-EMC

37 **DECLARATION OF REBEKAH S. GUYON IN SUPPORT OF  
38 23ANDME, INC.'S MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR  
39 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

## **DECLARATION OF REBEKAH S. GUYON**

I, Rebekah S. Guyon, declare as follows:

1. I am a shareholder with Greenberg Traurig, LLP, counsel of record for defendant 23andMe, Inc. ("23andMe"). I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I could and would testify competently with respect thereto. Pursuant to Civil L.R. 6-3(a) and Civil L.R. 7-11(a), I submit this declaration in support of the motion for preliminary approval of class action settlement, in conjunction with 23andMe's Memorandum in Support to further demonstrate the need for the preliminary injunctive relief provision in the proposed Preliminary Approval Order.

2. On October 31, 2023, *Vasquez v. 23andMe, Inc.*, Case No. 23CV424996, was filed in the Santa Clara Superior Court. A true and correct copy of the *Vasquez* Complaint is attached hereto as **Exhibit A**.

3. On December 4, 2023, *Morgenstern v. 23andMe, Inc.*, Case No. 23-610816, was filed in San Francisco Superior Court. A true and correct copy of the *Morgenstern* Complaint is attached hereto as **Exhibit B.**

4. On January 23, 2024, *Wilkus v. 23andMe, Inc.*, Case. No. 24CV429673, was filed in Santa Clara Superior Court. A true and correct copy of the *Wilkus* Complaint is attached hereto as **Exhibit C**.

5. On July 10, 2024, *Shaw v. 23andMe, Inc.*, Case No. TC24-2263, was filed in Santa Clara Superior Court. A true and correct copy of the *Shaw* Complaint is attached hereto as **Exhibit D**. 23andMe has not been served with the *Shaw* Complaint.

6. On January 24, 2024, Morgenstern filed a Petition for Coordination with the Judicial Council of California that seeks to coordinate the *Morgenstern* and *Vasquez* cases. A true and correct copy of the Petition for Coordination is attached hereto as **Exhibit E**.

7. On March 5, 2024, the Honorable Charles Adams in Department 7 of the California Superior Court for the County of Santa Clara was assigned as the coordination motion judge for Judicial Council Coordination Proceeding No. 5315. A true and correct copy of the Coordination Order is attached hereto as **Exhibit F**.

1       8. 23andMe filed Notices of Potential Add-On Case to coordinate *Wilkus* and *Shaw* with  
 2 *Morgenstern* and *Vasquez* in Judicial Council Coordination Proceeding No. 5315 on June 7, 2024 and July  
 3 12, 2024, respectively. True and correct copies of 23andMe's Notices of Potential Add-On Case are  
 4 attached hereto as **Exhibit G**.

5       9. On June 10, 2024, the Honorable Evette Pennypacker reassigned *Wilkus* to the Honorable  
 6 Charles Adams in Department 7 of the California Superior Court for the County of Santa Clara. The next  
 7 day, on June 11, 2024, Judge Adams designated *Wilkus* as a complex case and stayed discovery and  
 8 23andMe's responsive pleading deadlines pending a case management conference set for July 18, 2024.  
 9 True and correct copies of these orders are attached hereto as **Exhibit H**.

10      10. On July 12, 2024, Judge Adams continued the July 18 case management conference to  
 11 October 31, 2024 and entered a stay of the *Morgenstern*, *Vasquez*, and *Wilkus* matters pending the case  
 12 management conference set for October 31, 2024. A true and correct copy of Judge Adams' Order entering  
 13 the stay is attached hereto as **Exhibit I**.

14      11. To date, nearly 16,000 individual arbitrations have been filed against 23andMe by two class  
 15 action law firms asserting claims arising from the Security Incident.

16      12. On February 14, 2024, the law firm Milberg Coleman Bryson Phillips Grossman, PLLC  
 17 ("Milberg")—which is also counsel of record for the named Plaintiff Alexandra Hoffman in this MDL—  
 18 filed 100 individual arbitration demands with JAMS against 23andMe asserting claims arising from the  
 19 Incident, which are proceeding to the commencement stage. As respondent, Defendant has paid its share of  
 20 non-refundable filing fees in the amount of \$175,000.00, which is \$1,750 per case for the company in  
 21 consumer arbitrations. *See Arbitration Schedule of Fees and Costs*, JAMSADR.org,  
 22 <https://www.jamsadr.com/arbitration-fees>, last accessed Sept. 12, 2024. These demands assert claims on  
 23 behalf of California and Illinois residents for negligence, negligence *per se*, breach of implied contract, unjust  
 24 enrichment, and invasion of privacy. California claimants further assert alleged violations of California's  
 25 Unfair Competition Law, California Consumer Privacy Act, and California Customer Records Act.

26      13. On July 10, 2024, while settlement negotiations in this MDL were ongoing, Milberg filed  
 27 an additional 4,766 arbitration demands with JAMS. These additional demands assert claims on behalf of

1 residents of California and Illinois as described above. Milberg's additional demands also include claims  
 2 on behalf of residents of D.C. and all other states for negligence, negligence *per se*, breach of implied  
 3 contract, unjust enrichment, and invasion of privacy as well as alleged violations of state consumer  
 4 protection statutes, including the California Consumer Privacy Act, California Consumer Legal Remedies  
 5 Act, California Unfair Competition Law, Delaware Consumer Fraud Act, Florida Deceptive and Unfair  
 6 Trade Practices Act, Georgia Fair Business Practices Act, Massachusetts Consumer Protection Act,  
 7 Maryland Consumer Protection Act, Missouri Merchandising Practices Act, New Jersey Consumer Fraud  
 8 Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, Texas Deceptive Trade Practices  
 9 – Consumer Protection Act, Washington Consumer Protection Act, and the Wisconsin Deceptive Trade  
 10 Practices Act.

11 14. To date, Milberg has not paid the filing fees for the additional 4,766 arbitration demands  
 12 filed with JAMS. In the event that Milberg makes payment, Defendant would be further responsible for  
 13 respondent's share of non-refundable filing fees in the amount of more than eight million dollars  
 14 (approximately \$8,340,500.00).

15 15. Milberg is also counsel of record in three actions pending before this Court, titled *Dube et al.*  
 16 *v. 23andMe, Inc., Greenberg et al. v. 23andMe, Inc.,* and *Hoffman et al. v. 23andMe, Inc.*, pursuant to the  
 17 JPMDL's Transfer Order, including representation of named Plaintiff Alexandra Hoffman in the  
 18 Consolidated Class Action Complaint filed on June 26, 2024. See ECF No. 78.

19 16. On August 27, 2024, I informed Melissa Nafash, counsel at the law firm Labaton Keller  
 20 Sucharow ("Labaton"), that 23andMe had executed a Term Sheet that would result in a settlement agreement  
 21 releasing all claims on behalf of U.S. residents affected in the Incident. Ms. Nafash informed me that Labaton  
 22 would immediately file its arbitration demands in response to learning that a Term Sheet had been executed.

23 17. The next day, on August 28, 2024, Labaton filed 8,241 arbitration demands against 23andMe  
 24 with JAMS. On August 29, 2024, Labaton filed an additional 2,820 individual arbitration demands against  
 25 23andMe with JAMS, for a total of 11,061 arbitrations.

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18. Labaton has requested that JAMS issue an invoice for all 11,061 individual arbitration demands, which, if Labaton pays its filing fees, would amount to more than nineteen million dollars (approximately \$19,356,750.00) in filing fees for 23andMe if it is required to pay.

19. On February 5, 2024, the law firm Potter Handy, LLP (“Potter Handy”) submitted a demand notice to Defendant on behalf of 1,116 claimants. On or around August 29, 2024, Potter Handy notified me of their intent to initiate arbitrations on behalf of approximately 2,000 claimants. In the event that Potter Handy files such demands with JAMS, Defendant faces the potential of further filing fees of more than three million dollars (approximately \$3,500,000.00).

20. Potter Handy is also counsel of record in state proceedings arising out of the Incident under *Wilkus v. 23andMe, Inc.*, 24-cv-429673, which has been added and included in coordinated proceedings before the Superior Court of California, County of Santa Clara (Judicial Council Coordinated Proceeding No. 5315).

21. The foregoing demands amount to over \$31 Million in just the JAMS filing fees, which already exceed the negotiated class settlement amount. These filing fees do not account for the neutral arbitrators' retainer fees, which Defendant would ordinarily be responsible for, and ongoing administrative expenses. Furthermore, these fees do not account for those pre-arbitration demands and notices of intent to initiate arbitration that other law firms have served on behalf of thousands of additional putative claimants who were allegedly impacted by the Incident.

22. 23andMe disputes that the initiation of arbitration for many of these claimants was, or is, proper for numerous substantive and procedural reasons.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on September 12, 2024 in Los Angeles, California.

/s/ Rebekah S. Guyon  
Rebekah S. Guyon